



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/706,651	11/06/2000	Wesley W. Whitmyer JR.	03000-P0003C	8608

24126 7590 08/12/2003

ST. ONGE STEWARD JOHNSTON & REENS, LLC
986 BEDFORD STREET
STAMFORD, CT 06905-5619

EXAMINER

LE, MIRANDA

ART UNIT	PAPER NUMBER
----------	--------------

2177

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/706,651

Applicant(s)

WHITMYER, WESLEY W.

Examiner

Miranda Le

Art Unit

2177

-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 November 2000.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Art Unit: 2177

DETAILED ACTION

1. This communication is responsive to Amendment A, filed 05/22/2003.
2. Claims 1-9 are pending in this application. Claims 1, 4, 7 are independent claims. In the Amendment A, claims 1-2, 4, 7 have been amended. This action is made Final.
3. The rejection of claims 4-6 by 35 U.S.C. §112 first paragraph has been withdrawn in view of the amendment.
4. The objection to the specification (drawings, claim objection) of the invention has been withdrawn in view of the amendment.

Drawings

5. The drawings filed on 11/06/2000 are not **approved** by the Draftperson under 37 CFR 1.84 or 1.152 for the reasons submitted in Form PTO 948.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless:

(e) the invention was described in

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 2177

7. Claims 1-6, 8-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Mutalik et al. (US Patent No 6,360,330 B1).

Mutalik anticipated independent claims 1, 4, by the following:

As to claims 1, 4, Mutalik teaches “a system for onsite backup of internet-based data...a central computer; a client computer” at col. 3, line 53 to col. 4, line 6, Fig. 1;

“a communications link between said central computer and the Internet” at col. 3, line 53 to col. 4, line 6, Fig. 1;

“a communications link between said client computer and the Internet” at col. 3, line 53 to col. 4, line 6, Fig. 1;

“at least one database containing a plurality of data records accessible by said central computer, each data record containing a client identification number” at col. 6, lines 37-53, col. 5, lines 4-18, at col. 3, line 53 to col. 4, line 6, Fig. 1;

“software executing on said central computer for receiving a data backup request” at col. 4, line 43 to col. 5, line 3;

“software executing on said central computer for transmitting said data backup to client computer for onsite backup of internet-based data on said client computer” at col. 4, line 43 to col. 5, line 3.

In addition, as per claim 4, Mutalik teaches “software executing on said central computer for receiving commands from said client computer” at col. 2, line 42 to col. 3, line 6;

“software executing on said central computer for receiving data from said client computer” at col. 2, line 42 to col. 3, line 6;

Art Unit: 2177

“software executing on said central computer for storing said received data in said database” at col. 4, line 43 to col. 5, line 3, Fig. 1;

“software executing on said central computer for generating a data backup request” at col. 7, lines 24-51;

“software executing on said central computer for transmitting said data backup request through the internet” at col. 3, line 53 to col. 4, line 6, Fig. 1;

“software executing on said central computer for receiving a reply to said data backup request” at col. 4, line 43 to col. 5, line 3.

As to claims 2, 5, 8, Mutalik teaches “software executing on said client computer for storing said data backup in a location accessible to said client computer” at col. 3, line 53 to col. 4, line 6, col. 4, line 43 to col. 5, line 3, Fig. 1.

As to claim 3, 6, 9, Mutalik teaches “software executing on said central computer for retrieving said data backup” at col. 5, lines 20-64, col. 6, lines 37-53.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 2177

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mutalik et al. (US Patent No 6,360,330 B1), in view of Crawford et al. (US Patent No 5,771,354), and further in view of Langford et al. (US Patent No. 6,574,733 B1).

As per claim 7, Mutalik teaches “a system for onsite backup of internet-based data... a central computer; a client computer” at col. 3, line 53 to col. 4, line 6, Fig. 1;

“a communications link between said central computer and the Internet” at col. 3, line 53 to col. 4, line 6, Fig. 1;

“a communications link between said client computer and the Internet” at col. 3, line 53 to col. 4, line 6, Fig. 1;

“at least one database containing a plurality of data records accessible by said central computer, each data record containing a client identification number” at col. 6, lines 37-53, col. 5, lines 4-18, at col. 3, line 53 to col. 4, line 6, Fig. 1;

Art Unit: 2177

“software executing on said central computer for receiving commands from said client computer, for receiving data from said client computer, and for storing said data in said database” at col. 3, line 53 to col. 4, line 6, col. 4, line 43 to col. 5, line 3, Fig. 1.

Mutalik does not explicitly teach the following limitations; however, Crawford teaches “software executing on said central computer for receiving a data backup request and for receiving a data format conversion request” at col. 9, lines 59-62, col. 15, lines 6-15;

“software executing on said central computer for retrieving said data from said database and for converting said data to a format corresponding to said data format conversion request” at col. 9, lines 59-62, col. 15, lines 6-14, col. 19, lines 4-27.

Thus, it would have been obvious to one ordinarily skilled in the art at the time of the invention to combine the teachings of with the teachings of Crawford to include “software executing on said central computer for receiving a data backup request and for receiving a data format conversion request, and software executing on said central computer for retrieving said data from said database and for converting said data to a format corresponding to said data format conversion request” in order to provide some additional resources made available to the customer computer to enhance the customers’ local needs such as backup and recovery services.

Moreover, Mutalik and Crawford do not specifically teach the following limitations; but, Langford teaches “software executing on said central computer for encrypting said data backup” at col. 2, lines 42-57, col. 3, line 58 to col. 4, line 2, col. 6, lines 12-54;

“software executing on said central computer for transmitting said data backup to said client computer” at col. 2, lines 42-57, col. 3, line 58 to col. 4, line 2, col. 6, lines 12-54;

Art Unit: 2177

“software executing on said client computer for decrypting said data backup” at col. 2, lines 42-57, col. 3, line 58 to col. 4, line 2, col. 6, lines 12-54;

Thus, it would have been obvious to one ordinarily skilled in the art at the time of the invention to combine the teachings of Mutalik, Crawford with the teachings of Langford to include “software executing on said central computer for encrypting/transmitting said data backup to said client computer; and software executing on said client computer for decrypting said data backup” in order to provide a need for a secure data backup system that employs a suitable level of cryptographic security.

Response to Arguments

9. Applicant's arguments with respect to claims 1-9, which is “Crawford and Borza references do not provide an element that can provide a backup copy of internet based data generated by a remote data processing system on an onsite client computer”, have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

Art Unit: 2177

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Miranda Le whose telephone number is (703) 305-3203. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene, can be reached on (703) 305-9790. The fax number to this Art Unit is (703) 746-7238.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.



Miranda Le
August 7, 2003



GRETA ROBINSON
PRIMARY EXAMINER